

“Thou Shalt Not Kill” in the Dead Sea Scrolls

Narrative and Halakah*

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1. Introduction

The prohibition to kill is best known from its formulation *lō’ tiršah*, “you shall not kill,” or “you shall not murder,” in Exod 20:13 and Deut 5:17, as one of the so-called Ten Commandments. As is discussed in other contributions to this volume, the problems concern the exact semantic range of the verb *rāšah*, which is not a general verb for “to kill,” but which also does not exactly correspond to our modern concept of “murder.”¹ Therefore, we should look further and see how narrowly or broadly this negative commandment “not to kill” has been formulated in other scriptural passages and understood in later times. This paper will remain confined to the Dead Sea Scrolls, a collection of Jewish manuscripts that were mostly copied in the period from the first century BCE to the first half of the first century CE.

In the history of scholarship these scrolls have traditionally been assigned to a Jewish sect, often identified with the Essenes, that had a settlement at Qumran. The scrolls were therefore read as witnesses of this particular sectarian Jewish movement. Nowadays, it is more broadly held that many of the scrolls possibly were not composed by this sect at all, and it is accepted that the collection is more heterogeneous than previously thought. This contribution presents the textual and literary evidence and considers to what extent the views of those texts are representative of one specific group or movement.

2. Textual Evidence of the Prohibition to Kill and the Use of *rāšah* and Other Terms for “Killing” in the Dead Sea Scrolls

The few Exodus manuscripts from Qumran are very fragmentary, and Exod 20:13 has not been preserved in any of them. Likewise, Deut 5:17 does not remain in any of the Dead Sea Scrolls manuscripts that cover the book of Deuteronomy. However, the Decalogue, in the wording of Deuteronomy 5, has been preserved in several phylacteries and also in 4Q41 (4QDeutⁿ), a manuscript with excerpts from Deuteronomy.² Thus, we find the words *l’ tršh* in four manuscripts³ and remnants of the word *tršh* in two more.⁴

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¹ See the contribution of Matthias Köckert in this volume.

² On the character of 4Q41 see the official edition by S. White Crawford in *Qumran Cave 4 IX; Deuteronomy, Joshua, Judges, Kings*, eds. Eugene Ulrich et al., DJD 14 (Oxford: Clarendon, 1995), 117–128.

The verb *rāṣaḥ* is found a few more times in the scrolls, including five attestations in biblical manuscripts, corresponding exactly to the Masoretic Text.⁵ For the sake of completeness I note that there is no case where the Masoretic Text uses the verb *rāṣaḥ* and the corresponding scrolls texts have a variant reading.

In two other manuscripts *rāṣaḥ* is used, in both cases quoting Scripture. The Temple Scroll (11QT^a 66:6–7) presents the text of Deut 22:26 (the case of a betrothed woman raped in the field “is like that of someone who attacks and murders a neighbor”) as it is found in the Masoretic Text. The Damascus Document (CD 6:16–17) quotes Isa 10:2b (“widows are their prey, and they plunder the orphans”), but for *yētômîm yābōzzû*, “they plunder the orphans,” it reads, with Ps 94:6, *ytwmym yršhw*, “they murder the orphans.”⁶ This change may be a case of conflation of two scriptural passages, but it may also be an exegetical change of the Isaiah verse.

In the scrolls no commentaries on scriptural verses containing *rāṣaḥ* have been preserved. In part this is due to loss of material. Thus, 4QpHos^b 10 1 does refer to the two last words of Hos 6:9, but the section of the pesher with the earlier part of Hos 6:9 including *drk yršhw škmh*, “they murder on the road to Shechem,” is lost.

We may conclude that the scrolls give us no new evidence relevant to the semantics of *rāṣaḥ* or to the understanding of *rāṣaḥ* in the centuries around the turn of the era. The non-appearance of *rāṣaḥ*, apart from scriptural texts and quotations, could indicate that the word was not used anymore in the language of the scribes. Instead, if we want to examine the extent of the prohibition of killing in the scrolls, we will have to look at other verbs or expressions that refer to killing. The most common ones are, as in the Hebrew Bible, the general terms *mwt hiphil* and *hrg*,⁷ whereas other verbs or phrases may focus on a specific aspect of the killing. Even more common than *mwt hiphil* and *hrg* is *nh hiphil*, “to strike,” which, however, does not necessarily imply death. In the Hebrew scrolls we do not find *qtl*, which is, however, the most common word for killing in the Aramaic ones.

3. Prohibition of Killing

Only rarely do we find in the Dead Sea Scrolls an explicit prohibition of killing. More often, specific cases of killing are described as violence or sin. A few examples suffice.

³ 1Q13 1–18 14; 4Q41 4:9; 4Q139 1 10; XQ3 1 27.

⁴ 4Q129 1R 9; 4Q134 1 25.

⁵ 1QIsa^a 1:25 (Isa 1:21); 4Q27 80–84 12, 20 (Num 35:21, 27); 4Q82 11 v 2 (Hos 6:9).

⁶ In 4Q266 (4QD^a) 3 ii 23 only the last letter, *wāw*, has been preserved, which allows for both *yršhw* and *ybzw*. The other main variant in the quotation of Isa 10:2b in CD 6:16–17 is the absence of Isa 10:2 *mišpaṭ* from CD 6:16 and, in that same place, the addition of the nota accusativi *ʾt*.

⁷ On *hrg* in the scrolls, see now U. Dahmen, “*hāraq*,” in: *Theologisches Wörterbuch zu den Qumrantexten*, eds. Heinz-Josef Fabry and Ulrich Dahmen (Stuttgart: Kohlhammer, 2011), 1:816–818.

3.1. The Book of Watchers

In the Enochic Book of Watchers, fragmentarily preserved in multiple copies among the Dead Sea Scrolls,⁸ the giants, who are described as the lawless ones (1 En. 7:6), “began to kill men and to devour them” (1 En. 7:4).⁹ The killing is part of a list of sins of the giants, including devouring one another’s flesh and drinking the blood.

In the immediately following lines of 1 Enoch, the text continues:

Asael taught men to make swords of iron and weapons and shields and breastplates and every instrument of war.

He showed them metals of the earth, and how they should work gold to fashion it suitably, and concerning silver, to fashion it for bracelets and ornaments for women. And he showed them concerning antimony and eye paint and all manner of precious stones and dyes.

And the sons of men made them for themselves and for their daughters and led the holy ones astray. And there was much godlessness on the earth, and they made their ways desolate. (1 En. 8:1–2)

Multiple motifs appear in this text, such as the wide-spread euhemeristic tradition that certain arts, in particular those related to metallurgy, are divinely revealed.¹⁰ Thus, the first connection between weapons and gold and silver adornments lies in their production. The second connection is that both products lead to godlessness and violence on the earth (cf. also 1 En. 9:1). The reference to bloodshed in the same verse may refer to the killing of the giants, or also include killing by the weapons taught by Asael. It should be noted, however, that the Book of Watchers does not discuss killing in general, but only violent killing as one of the many sins that corrupted the earth.

⁸ 4Q201, 4Q202, 4Q204, 4Q205, and 4Q206, all published in J. T. Milik, *The Books of Enoch: Aramaic Fragments of Qumrân Cave 4* (Oxford: Clarendon, 1976), and, if authentic, XQpapEnoch, published by E. Eshel and H. Eshel, “New Fragments from Qumran: 4QGen^f, 4QIsa^b, 4Q226, 8QGen, and XQpapEnoch,” *DSD* 12 (2005): 134–157, esp. 146–157.

⁹ The Aramaic is partially preserved in 4Q201 (4QEn^a) 1 iii 21. Milik, *The Books of Enoch* (n. 8), 150, reads here *qšryn lqtlh l’nš*, “and they conspired to kill men,” but one should read *wšryw lqtlh l’nš*, “and they began to slay men.” See Klaus Beyer, *Die aramäischen Texte vom Toten Meer* (Göttingen: Vandenhoeck & Ruprecht, 1984), 236, and M. Langlois, *Le premier manuscrit du Livre d’Hénoch* (Paris: Cerf, 2008), 222–223. The reading *wsryn* instead of *wšryw* in G. W. E. Nickelsburg, *1 Enoch 1: A Commentary on the Book of 1 Enoch, Chapters 1–36; 81–108* (Minneapolis: Fortress, 2001), 183 is an error. Translations from *1 Enoch* are adopted from G. W. E. Nickelsburg and J. C. VanderKam, *1 Enoch: A New Translation* (Minneapolis: Fortress, 2004).

¹⁰ See the excursus “The Origin of the Asael Myth,” in Nickelsburg, *1 Enoch 1* (n. 9), 191–193, as well as the classic overview of M. Éliade, *Forgerons et Alchimistes* (Paris: Flammarion, 1956; expanded edition 1977).

3.2. Cain in Jubilees

In Jubilees, a composition of which many manuscripts were found among the scrolls, the first condemnation of a specific kind of killing is given in the rewriting of Cain's murder of Abel, in Jub. 4:2–6.¹¹ As in Gen 4:3–16, Cain is cursed because he murdered Abel, and the episode is followed by one of the characteristic references to the heavenly tablets in Jubilees:

For this reason, it has been written on the heavenly tablets: “Cursed is the person who beats his companion maliciously.” And all who saw (it) said: “Let him be (cursed). And let the man who has seen but has not told be cursed like him.”

For this reason, we (i.e., the angels) report, when we come before the Lord our God, all the sins which take place in heaven and on earth—what (happens) in the light, in the darkness, or in any place. (Jub. 4:5–6)

This text on the heavenly tablets is close to that of Deut 27:24 (“Cursed be anyone who strikes down a neighbor in secret.” All the people shall say, ‘Amen!’”), with the distinction that Deut 27:24 *bassāter*, “in secret,” corresponds to *ba-’ekay*, “maliciously,” in Ethiopic. The linking of Deut 27:24 to the Cain episode, who killed his brother *baśśādeh*, “in the field,” is exegetical as can be seen from the Temple Scroll, which discusses the case of rape of a virgin, and explains *baśśādeh*, “in the field,” in Deut 22:27 (“Since he found her in the field, the engaged woman may have cried for help, but there was no one to rescue her”) as *bmqwm rḥwq wstr m’yr*, “in a place far away and hidden from the city” (11QT^a 66:4–8).¹² Though the two cases are different, the halakic implication seems to be that any killing in the field is intentional.

As is well known, Cain was allowed a length of time on the earth after his crime (Jub. 4:4). Jubilees describes that Cain was killed one year after Adam died:

His house fell on him, and he died inside his house. He was killed by its stones, for with a stone he had killed Abel, and, by a just punishment, he was killed with a stone. For this reason, it has been ordained on the heavenly tablets: “By the instrument with which a man kills his fellow, he is to be killed, as he wounded him.” (Jub. 4:31–32)

As so often in Jubilees, the text appeals to the heavenly tablets in order to introduce laws that are not to be found verbally in the scriptures as we know them. The special kind of *lex talionis* that is introduced here, may be derived, according to James Kugel, from the interpretation of Lev 24:19–20, the two halves of which were interpreted in two different ways, referring to both the kind of harm being done to someone and the

¹¹ For an extensive discussion of this episode in Jubilees, see J. T. A. G. M. van Ruiten, *Primaevael History Interpreted: The Rewriting of Genesis 1–11 in the Book of Jubilees* (Leiden: Brill, 2000), 138–150. Translations are adopted from J. C. VanderKam, *The Book of Jubilees*, CSCO 511; Scripta Aethiopica 88 (Leuven: Peeters, 1989).

¹² Note also the correspondence in terminology between Gen 4:8, *wayyāqom qayin ’el-hebel ’āḥîw wayyahargēhû*, and Deut 22:26, *ka’āšer yāqûm ’îš ’al rē’ēhû ûrēšāhō*.

means by which the harm was inflicted.¹³ Thus, Cain should be killed because he had killed, and by a stone because he had killed with a stone.

Recent scholarship has proposed that the Book of Jubilees is multi-layered and that the halakic treatments in the sections referring to the heavenly tablets belong to a later layer, either as the work of the final redactor, as Michael Segal argues,¹⁴ or as that of an interpolator, thus Kugel.¹⁵ For Kugel, both of the halakic sections in Jub. 4:5–6 and 31–32 are the work of this interpolator.

Regardless of one’s attribution of those verses, they classify Cain’s killing of Abel as premeditated and therefore worthy of full retribution. At this point, the text of Jubilees is not concerned with the prohibition to kill but with the sanctions for special kinds of killing.

3.3. The Damascus Document on killing gentiles

A rare case of an explicit prohibition of a specific form of killing is found in the Damascus Document. In a short section with halakah related to gentiles, the text reads:

No man shall stretch out his hand to shed the blood of a Gentile for the sake of riches and gain. Nor shall he carry off anything of theirs, lest they blaspheme, unless so advised by the commonwealth of Israel.

No man shall sell clean beasts or birds to the Gentiles lest they offer them in sacrifice. He shall refuse, with all his power, to sell them anything from his granary or winepress, and he shall not sell them his manservant or maidservant inasmuch as they have been brought by him into the covenant of Abraham. (CD 12:6–11)¹⁶

I quoted the entire section on the gentiles to show that the section does not focus on killing or homicide, but discusses different aspects of the relation towards gentiles. In the most extensive treatment of this section, Lawrence Schiffman observes that these are all rules that “augment biblical law, discussing only matters not explicitly mentioned in the Bible.”¹⁷ Schiffman summarizes “that to the Tannaim, the killing of a

¹³ J. L. Kugel, “On the Interpolations in the *Book of Jubilees*,” *RevQ* 24/94 (2009): 215–272 at 262.

¹⁴ M. Segal, *The Book of Jubilees: Rewritten Bible, Redaction, Ideology and Theology* (Leiden: Brill, 2007).

¹⁵ Kugel, “On the Interpolations” (n. 13), building on the article of L. Ravid, “The Special Terminology of the Heavenly Tablets in the Book of *Jubilees*,” *Tarbiz* 68 (1999): 463–471 [Hebrew].

¹⁶ The translation is adopted, with minor changes, from G. Vermes, *The Complete Dead Sea Scrolls in English* (Harmondsworth: Penguin, 2007), 141.

¹⁷ L. H. Schiffman, “Legislation Concerning Relations with Non-Jews in the *Zadokite Fragments* and in Tannaitic Literature,” *RevQ* 11/43 (1983): 379–389 at 389. See also idem, “Non-Jews in the Dead Sea Scrolls,” in *The Quest for Context and Meaning*, eds. C. A. Evans and Sh. Talmon (Leiden: Brill, 1979), 153–171, esp. 155–167; republished in L. H. Schiffman, *Qumran and Jerusalem: Studies in the Dead Sea Scrolls and the History of Judaism* (Grand Rapids, MI: Eerdmans, 2010), 365–380, esp. 366–368.

gentile did not incur the death penalty as did the killing of a Jew.”¹⁸ The passage from CD 12:6–7 seems to indicate that in certain circumstances the killing of a gentile is permissible, for example, in a case of self-defence or the protection of other Jews, but specifies that if it is undertaken for profit, it is forbidden. Schiffman argues that this specific prescription must be a response to the Hasmonean wars of conquest, which could be interpreted as waged for the sake of riches and gain, since they aimed at adding territory and increasing revenues and spoils of war.¹⁹ Though the Damascus Document also refers to “riches and gain” in other prohibitions,²⁰ the reference in the Habakuk peshier to the “later priests of Jerusalem who will gather riches and gain from the spoil of the nations” (1QpHab 9:4–5) supports the idea that this prohibition may criticize the Hasmoneans in particular.

4. Legitimized Killing

In the Book of Jubilees we find two cases where killing seems to be legitimized, namely the killing of the Shechemites by Simeon and Levi, and the killing of Esau by Jacob. The first killing is also described in Genesis 34, but Genesis contains no report of the second killing.

4.1. Levi and Simeon Avenge the Shame of Dinah (Jubilees 30)

In the retelling of Genesis 34, the episode where Levi and Simeon kill all the men of Shechem as a revenge for the defilement of their sister Dinah, Jubilees 30 has some important differences with respect to the details of the narrative.²¹ In Genesis 30, Levi and Simeon act on their own initiative, and whereas Jacob complains about the possible consequence of their deeds, the narrator does not explicitly condemn or condone their actions. In Jubilees, however, the author, or rather, according to Kugel, the interpolator, emphasizes that Levi’s and Simeon’s deeds were decreed by God, and that “Levi and his sons will be blessed forever because he was eager to carry out justice, punishment, and revenge against all who rise against Israel” (30:18).²²

¹⁸ Schiffman, “Legislation” (n. 17), 381.

¹⁹ Schiffman, “Legislation” (n. 17), 381–382; idem, “Non-Jews” (n. 17), 156; repr. 367.

²⁰ CD 8:7 and 19:19 (acting arrogantly); 10:18 (going to court) and 11:15 (profaning the Sabbath).

²¹ Nothing of Jubilees 30 remains in the scrolls manuscripts of Jubilees, but the text of this chapter has been transmitted to us in Ge’ez and Latin.

²² The punishment over the Shechemites “had been decreed against them in heaven that they (i.e., Levi and Simeon) were to annihilate all the Shechemites with the sword, since they had done something shameful in Israel” (Jub. 30:5). “The Lord handed them over to Jacob’s sons for them to uproot them with the sword and to effect punishment against them” (30:6). The Shechemites “were

According to the Jubilees text, Levi was appointed priest, and his sons received the eternal priesthood because of what he had done to the Shechemites.

The Jubilees text uses the Shechem episode to underscore the issue of purity, which requires endogamy, and hence the prohibition on intermarriage, which is a dominant theme in Jubilees and other Second Temple literature.²³ Here, the text, according to Kugel the interpolator, introduces extensively (Jub. 30:7–10)²⁴ the law on endogamy written in the heavenly tablets, whilst emphasizing that any Israelite who gives sister or daughter to a gentile shall be stoned. Jubilees can regard intermarriage as a capital offense, because it interprets Lev 18:21 and 20:2–5 about the giving of offspring to Molech as a reference to intermarriage: “the man who has defiled his daughter within all of Israel is to be eradicated because he has given one of his descendants to Molech and has sinned by defiling them” (Jub. 30:7–10).²⁵

The heavenly tablets section (or interpolation) does not explain why the Shechemites had to be killed, or why Levi's and Simeon's acts were not only legitimized but even praised. Jubilees gives no halakic reason. The capital punishment for intermarriage is only meted out to the Israelites involved, not to the gentiles. And though the purity of Israel is central to Jubilees, its authors do not proscribe the killing of gentiles who defile this purity. Exegetically, one might perhaps argue that any act of *nēbālā*, “folly, outrage,” deserves capital punishment (Deut 22:21), but does this apply to non-Israelites? Rather, it would seem that the killing is legitimized by the narrator because it was ordained by God. And Levi and Simeon are praised by the narrator (or

handed over to Jacob's two sons. They killed them in a painful way. It was a just act for them and was recorded as a just act for them” (30:17). “On the day that Jacob's sons killed (the people of) Shechem, a written notice was entered in heaven that they had carried out what was right, justice and revenge against the sinners. It was recorded as a blessing” (30:23).

²³ See, for example, C. Werman, “Jubilees 30: Building a Paradigm for the Ban on Intermarriage,” *HTR* 90 (1997): 1–22. For an overview of important themes in Jubilees, see J. C. VanderKam, *The Book of Jubilees*, Guides to Apocrypha and Pseudepigrapha (Sheffield: Sheffield Academic Press, 2001).

²⁴ “7 If there is a man in Israel who wishes to give his daughter or his sister to any foreigner, he is to die. He is to be stoned because he has done something sinful and shameful within Israel. The woman is to be burned because she has defiled the reputation of her father's house; she is to be uprooted from Israel. 8 No adulterer or impure person is to be found within Israel throughout all the time of the earth's history, for Israel is holy to the Lord. Any man who has defiled (it) is to die; he is to be stoned. For this is the way it has been ordained and written on the heavenly tablets regarding any descendant of Israel who defiles (it): ‘He is to die; he is to be stoned.’ This law has no temporal limit. There is no remission or any forgiveness; but rather the man who has defiled his daughter within all of Israel is to be eradicated because he has given one of his descendants to Molech and has sinned by defiling them.” (Jub. 30:7–10) Kugel, “On the Interpolations” (n. 13), 250–253 and 264, sees Jub. 30:7 as the end of the narrator's text and Jub. 30:8–17 (as well as 18–23) as interpolations.

²⁵ See the classical discussion by G. Vermes, “Leviticus 18:21 in Ancient Jewish Exegesis,” in *Studies in Aggadah, Targum and Jewish Liturgy in Memory of Joseph Heinemann*, eds. E. Fleischer and J. J. Petuchowski (Jerusalem: Magnes, 1981), 108–124.

interpolator) not because they killed the Shechemites, but because they executed what had been ordained by God.²⁶

4.2. Jacob Kills Esau

Jubilees includes an account of the war between Jacob and his sons against Esau and his sons. During the battle Judah tells his father to shoot his arrows and kill the enemies. Jacob then shoots his arrows and kills Esau and Adoran, the Aramean (Jub. 38:1–3).²⁷ The idea of a battle between Jacob and Esau may be based on Gen 27:40,²⁸ but the actual killing has been set up by the narrator in earlier sections of the book. In Jub. 27:4, Jacob announces that if Esau wants to kill him, he himself would kill Esau. In Jubilees 35 Isaac prophesizes that Esau and his seed would be destroyed, “for he has abandoned the God of Abraham and has gone after his wives, after impurity” (35:14), that he would swear an oath, but not abide by it (35:15), and that if he wished to kill Jacob, he would be given into the hand of Jacob (35:16). All of this happens, of course, and Esau and Jacob swear that each would love his brother and not seek evil.²⁹ The one who would seek evil would come to an end (ch. 36). When, finally, Esau does wage war against Jacob, Jacob compares Esau to a boar leaping to a spear and not wanting to withdraw from it (37:24).

The narrator shows that Jacob did not want to kill Esau but executes the judgment that has been predicted all along. At the same time, the narrator indicates that Jacob had to act out of self-defence. Esau, not Jacob, was to blame. Ultimately, it is because Esau broke the great oath, that he comes to his end, which had been hinted at all along.

These are two different cases, but they have a few things in common. The killing is determined in heaven, and the ones killed are given into the hand of Levi and Simeon, respectively Jacob. Both the Shechemites and Esau and his sons are sinners and non-Israelites. And the narrator creates contrasts: the righteousness of Levi is opposed to the outrageous behaviour of Shechem; and the brotherly love of Jacob stands against the evil mind of Esau. One wonders to what extent the second-century BCE political situation has coloured these narratives, and perhaps even legitimized the Judean expansionist politics of the Hasmonean time.

²⁶ See J. L. Kugel, *The Ladder of Jacob: Ancient Interpretations of the Biblical Story of Jacob and His Children* (Princeton: Princeton University Press, 2006), 36–80 (“The Rape of Dinah, and Simeon and Levi’s Revenge”).

²⁷ See also T. Jud. 9:1–3, and *Midrash Wayyissa’u* (= *Yalqut Shimoni* 1:135).

²⁸ J. L. Kugel, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge, MA: Harvard University Press, 1998), 372.

²⁹ See for this motif A. Livneh, “Love Your Fellow as Yourself: The Interpretation of Leviticus 19:17–18 in the Book of *Jubilees*,” *DSD* 18 (2011): 173–199.

5. Capital Punishment

The text of Jubilees mentions a few transgressions which should result in the death penalty. This goes for transgressions of Sabbath laws (Jub. 2:25, 27; 50:8, 12), for intermarriage (30:7, 10), and adultery with one’s father’s wife (33:13–17). Whereas in the case of the Sabbath laws, the text merely states “a man who does any of these things on the Sabbath day is to die” (50:13), the two other cases are more explicit on how the punishment should be executed. Jubilees 30:7–9 prescribes the stoning of the man who gives his daughter or sister to gentiles, and the burning of the woman who marries a gentile. Jubilees 33:13–14 states that the man who commits adultery with his father’s wife should be put to death immediately by stoning. The latter case corresponds to the curse of Lev 20:11 (“The man who lies with his father’s wife has uncovered his father’s nakedness; both of them shall be put to death; their blood is upon them”), and we have seen that the death penalty on intermarriage is derived from the interpretation of Lev 20:2.

The death penalty on profanation of the Sabbath, or any transgression, seems to be derived from Exod 31:14, which, like Jub. 2:25, states in general terms that those who profane the Sabbath shall die. However, Jubilees 50 sums up lists of different kinds of Sabbath transgressions, and does not, like rabbinic halakah, distinguish between inadvertent transgressions and intentional ones.

Here, I am interested in several things. What cases do we have where the rules with regard to death penalties, found in the various Dead Sea Scrolls, differ from those in the scriptures we know as Hebrew Bible? And, to what extent were such rules only exegetical or rhetoric, or were death penalties actually executed? And, if so, under which conditions?

5.1. Death Penalties in the Temple Scroll

The Temple Scroll, which deals with the Temple, sacrifices, feasts, and purity, and concludes in 11QT^a 53–66 with a paraphrase of Deuteronomy 12–22 (the so-called Deuteronomic paraphrase), includes a large number of transgressions that are to be punished by death. The following cases have been preserved:³⁰

Transgression	Temple Scroll	TeNaKh
Unlawful entering the center of the inner court	11QT ^a 35:4–8	Num 17:5
Judges accepting bribes	11QT ^a 51:16–18	

³⁰ The list does not include sections that in their entirety are lost in the damaged sections, such as the bride who was not a virgin (Deut 22:20–21), which should have belonged to the lost top part of 11QT^a col. 66.

Prophet leading astray	11QT ^a 54:8–18	Deut 13:2–6
Israelite leading astray	11QT ^a 54:19–55:05 / 11QT ^b 16	Deut 13:7–11
Idolatry	11QT ^a 55:15–21	Deut 17:2–5
Disobeying the priest	11QT ^a 56:1–11	Deut 17:10–12
False prophet	11QT ^a 61:1–5	Deut 18:20–22
Rebellious Child	11QT ^a 64:2–6	Deut 21:18–21
Traitor	11QT ^a 64:7–9	
Cursing one's people	11QT ^a 64:9–11	
Adultery with a betrothed woman	11QT ^a 66:1–8	Deut 22:23–29

As this list shows, the Temple Scroll includes three cases of capital crimes that are not included in the texts of the Hebrew Bible. The first is included in the law of the judges which agrees largely with Deut 16:18–20, and then adds the clause *wh'yš š'r yqh sw'hd wy'th mšp't šdq ywmt w'lw' tgrwrw mmnw lhmytw*, “Any man who accepts a bribe and (thus) perverts righteous judgment must be put to death. You shall not fear him; put him to death” (11QT^a 51:16–18). In a long discussion of the passage, Schiffman argues that the author of the Temple Scroll drew the conclusion that perversion of justice is a capital offense by midrashic exegesis involving Deut 1:17 and 18:22.³¹ In addition, the same inclusion of the prohibition of taking bribes and thus perverting justice is also found in the law of the king (11QT^a 57:19–21), which may reflect the author's criticism of the state of affairs in Hasmonean Palestine.³²

The other two cases of capital crimes, to be punished by hanging, both involve cases of treason of one's own people, namely by informing and by cursing. These two cases have been inserted in the Deuteronomic paraphrase at the place where Deut 21:22–23 gives prescriptions about corpses that are hung on a pole *after* their execution. Here, however, the hanging of a living person is the manner of the execution, whereas Deuteronomy does not discuss these forms of treason. The specific rule is also of historical interest, because it can be connected to the crucifixion by Alexander Jannaeus of the eight hundred Jews who had first sided with Demetrius III against him (Josephus, *Ant.* 13.380), and to the Peshar Nahum's reference (4Q169 3–4 i 6–8) to the crucifixion of the Pharisees (the “seekers after smooth things”) by the “lion of wrath.” The argument may be made that Jannaeus felt justified to crucify those traitors because of the legal tradition which has also been preserved in the Temple

³¹ L. H. Schiffman, *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, ed. F. García Martínez; STDJ 75 (Leiden: Brill, 2008), 189–212 (“The Prohibition of Judicial Corruption in the Dead Sea Scrolls, Philo, Josephus, and Talmudic Law”) at 196–197.

³² *Ibid.*, 197.

Scroll. It is disputed, however, whether the author of the Nahum Peshar approved or disapproved of this crucifixion.³³

5.2. Death Penalties and the Damascus Document

The evidence of the Damascus Document is of direct importance since it does not consist of rewritings of scriptural texts, such as Jubilees or the Temple Scroll, but of legislation for reform communities who lived in Palestine. As such, it deals more concretely with the death penalty.

The first case of interest is the concern of the Damascus Document for the Sabbath. The Damascus Document contains an extensive section on Sabbath law (CD 10:14–11:18), followed by short sections on purity, entering a house of worship, and the prohibition of sexual intercourse in Jerusalem (CD 11:18–12:2). This is followed by two rules about how to deal with offenders:

Everyone, whom the spirits of Belial rule, and who speaks rebellion, shall be judged with the judgment of the medium and the wizard. And everyone who goes astray, profaning the Sabbath and the festivals shall not be put to death, but it is the task of the people to watch him. And if he heals³⁴ from it, they must watch him for seven years. Afterwards he may enter the assembly. (CD 12:2–6)

The middle clause would, at first sight, seem to reject the death penalty for violation of the Sabbath, which is formulated in Exod 31:14 (and 35:2) and in the Book of Jubilees. Chaim Rabin therefore suggested that the sect polemicized against the imposition of the death penalty for Sabbath violation.³⁵ However, the specific wording—which seems to be a conflation of two well-known expressions, namely “to profane the Sabbath,” and “to go astray with respect to Sabbaths and festivals”—may indicate we are dealing with a special case. Thus, the use of “go astray” could mean that the clause deals with an inadvertent violation of the Sabbath. This goes even more so, if one would read this in contrast to the earlier clause which mentions *srh*, “rebellion.” Charlotte Hempel, however, focuses on the mention of “going astray” and the combination of “the Sabbath and the festivals” and suggests, following André Dupont-Sommer, that the text rather deals with going astray with regard to the dates on Sabbath and months (see Jub. 6:37–38; CD 3:13–14).³⁶ Nonetheless, the exact meaning

³³ See most recently H. Eshel, *The Dead Sea Scrolls and the Hasmonean State* (Grand Rapids, MI: Eerdmans, 2008), 124–129; and D. W. Chapman, *Ancient Jewish and Christian Perceptions of Crucifixion*, WUNT 2.244 (Tübingen: Mohr Siebeck, 2008), 52–66.

³⁴ Both CD 12:5 and 4Q271 5 i 20 read *yyp*, but perhaps the form is to be understood as *yroph*, “(when) he ceases.”

³⁵ Ch. Rabin, *Qumran Studies* (Oxford: Oxford University Press, 1957), 86.

³⁶ Ch. Hempel, *The Laws of the Damascus Document: Sources, Tradition, and Redaction*, STDJ 29 (Leiden: Brill, 1998), 157–159. See A. Dupont-Sommer, *The Essene Writings from Qumran* (Cleveland: World Publishing, 1961), 154 n. 6.

remains unclear. What does it mean that the *bny h'dm* should keep watch on that person? How should we understand the reference to that transgressor “being healed,” or “resisting” from it? And whence this period of seven years? The period of seven years is longer than any of the periods mentioned in the penal code of the Damascus Document, and it would seem to be a period of parole.

Apart from the preceding clause, the Damascus Document has a few other cases where it prescribes the death penalty. Thus, CD 9:1 has the problematic clause, “Any man who shall dedicate (or destroy) any man according to the laws of the nations is to be put to death,”³⁷ which is based on Lev 27:29, “No human beings who have been devoted to destruction can be ransomed; they shall be put to death” (NRSV). Because of the reference to the laws of the nations or gentiles, Schiffman interprets this as informing against a fellow Jew in a non-Jewish court, in short, a form of informing which in the Temple Scroll also was a capital crime. Explicit reference to “one who reveals the secret of his people to gentiles” is found elsewhere in the Damascus Document (4Q270 2 ii 13) in a list of transgressors which God decreed should be removed.

One of the Cave 4 manuscripts, which preserves material not present in the Cairo Genizah manuscripts of the Damascus Document, refers to a *mšpt mwt*, a “capital offense,” in a fragment which seems to deal with a woman who has given birth (4Q266 6 ii). On the basis of the few actually remaining words, entire lines have been reconstructed to refer to a parturient still in the state of impurity, who should not enter the temple precinct because that would be a “capital offense.” The reconstruction is plausible, but it goes too far, in my opinion, to conclude, on the basis of such an extensive reconstruction, that we have here a case of prescription of the death penalty which would go beyond the scriptural prescriptions.³⁸

Aharon Shemesh recently referred to one other case of the death penalty in the Damascus Document, namely “And whoever comes to the house of prostration [...] let them not interrupt the entire service and die.” However, Rabin’s reading which Shemesh regards as highly probable, “[and d]ie” (last word of CD 11:23), should be rejected as both palaeographically and with respect to content problematic.³⁹

³⁷ Translation Schiffman, *Non-Jews* (n. 17), 158, repr. 369. In spite of the difficulty understanding this line *kl 'dm 'šr yhrym 'dm m'dm bhwqy hgwym lhmyt hw'*. Cf. Lev 27:29 *kol ḥērem 'āšer yohōram min hā'ādām lō' yippādeh mōt yūmāt*.

³⁸ See reconstruction (by J. T. Milik) and brief notes in J. M. Baumgarten, *Qumran Cave 4 XIII: The Damascus Document (4Q266–4Q273)*, DJD 18 (Oxford: Clarendon, 1996), 55–56. See also idem, “The Avoidance of the Death Penalty in Qumran Law,” in *Reworking the Bible: Apocryphal and Related Texts at Qumran*, eds. E. G. Chazon et al.; STDJ 58 (Leiden: Brill, 2005), 31–38 at 35.

³⁹ A. Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2009), 132 and 183–184 n. 6. Read instead, at the end of CD 11:23, *ky byt*. See the discussion in A. Steudel, “The Houses of Prostration CD xi 21 - xii 1 — Duplicates of the Temple,” *RevQ* 16/61 (1993): 49–68, esp. 50–52.

Shemesh lumps those two problematic cases from CD together with the three additional cases in the Temple Scroll of death penalty, and characterizes this as a “tendency of the scrolls to add extra death penalties to those specified in Scripture,”⁴⁰ which he adduces as one of the cases of the tendency toward stringency.⁴¹

In contrast, in a short article on the death penalty in Qumran halakah, Joseph Baumgarten argues for exactly the opposite, namely that in the case of the death penalty the texts suggest that this was actually avoided. Baumgarten ignores Jubilees and the Temple Scroll, probably because these are normally not seen as Qumranic works. He does admit that in a few cases other texts also proscribe the death penalty, but points out that there is at the same time a tendency to eliminate the death penalty. The key example is that of a bride being accused by her husband of not being a virgin at marriage. This death penalty is prescribed in Deut 22:20–21, which in turn is paraphrased in 4Q159 2–4 8–9:

If a man brings out an evil name against an Israelite maiden—if he speaks out at the moment when he takes her, then reliable women should examine her. And if he has not lied against her, she shall be put to death.

Baumgarten points out that the procedures described in the Damascus Document effectively reduce the chance that this will happen. Thus, 4Q271 gives several rules for marriage, including the one that

[...] any woman, upon whom there is a bad name in her maidenhood in her father's home, let no man take her, except upon examination by trustworthy women of repute selected by command of the supervisor over the many. And afterward he may take her, and when he takes her he shall act in accordance with the law [...] and he shall not tell about her. (4Q271 3 12–15)

For other examples that would reduce the chance of a death penalty, Baumgarten refers to the regulations about witnesses in the Damascus Document. Deuteronomy 19:15 “Only on the evidence of two or three witnesses shall a charge be sustained,” is ambiguous. The Damascus Document (CD 9:16–21) interpreted this rule in such a manner that in the case of capital religious crimes three witnesses were needed, one on each separate occasion.⁴² Moreover, the rule demands a special procedure, consisting of reproof of the sinner and reporting it to the overseer. This altogether would minimize the possibility of capital punishment.

⁴⁰ Shemesh, *Halakhah in the Making* (n. 39), 132.

⁴¹ Ibid., 131.

⁴² Baumgarten, “Avoidance” (n. 38), 33–34. See also discussion in L. H. Schiffman, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (Chico, CA: Scholars Press, 1983), 74–78.

5.3. Execution of Death Penalties

The question is to what extent punishments that are prescribed in texts were actually meted out. With regard to the Book of Jubilees, Lutz Doering originally argued that the rules of the Book of Jubilees were meant to be actually put in force, and he therefore cautiously argued that “if a sabbath transgressor within the circles of Jubilees were apprehended, and *if* there were a certain autonomy in capital matters this person would surely be executed.”⁴³ The mitigation in the Damascus Document might in that case be a corrective reaction. Recently Doering has become more cautious and acknowledges that “in Jubilees the default punishment for such transgressions is death, but we do not know whether this reflects legal reality or is merely rhetorical.”⁴⁴ Given our lack of knowledge about what Doering calls the circles of Jubilees and the function the Book of Jubilees had in such circles, I do not believe we can draw the conclusion that they would have executed a person, who would, for example, have transgressed any of the forbidden activities of Jubilees 50, such as catching an animal or riding a horse. Sociologically, it seems unlikely that a member of a circle or group which held these Sabbath rules would actually, either deliberately or even inadvertently, transgress any of these commandments, without, at the same time, ceasing to be a member of such a group. Theologically, it is questionable whether the circles behind Jubilees would have effectuated in their own midst those rules that were presented as a blueprint for the period in which Israel would have been cleansed and the land would be clean (Jub. 50:5). The effectuation of the death penalty for group members, even if such circles had the autonomy to do so, would make little sense in a land which was still defiled by all the sins that Jubilees describes.

Another position has been taken by Baumgarten. He comments that even when we find terminology that uses the word “death,” like in *mšpṭ mwt* or *dbṛ mwt* this need not necessarily mean that the offender was to be executed.⁴⁵ Instead, he suggests that the evidence in the rule texts as well as Josephus’s description on the Essenes, indicate that expulsion from the community would have been the most severe penalty. Baumgarten’s arguments are cumulative, and not every single element is entirely convincing. I will mention those which are, in my opinion, the strongest.

First, Baumgarten points out that both in the penal codes of the Serek Hayaḥad and the Cave 4 manuscripts of the Damascus Document, as well as in Josephus’ description of the Essenes, expulsion is the most severe penalty. Only with regard to blasphemy Josephus mentions the death penalty (*J.W.* 2.145), but for the Rule of the Community (1QS 6:27–7:2) blasphemy should be punished by permanent expulsion. Second, the

⁴³ L. Doering, “The Concept of the Sabbath in the *Book of Jubilees*,” in *Studies in the Book of Jubilees*, ed. M. Albani et al.; TSAJ 65 (Tübingen: Mohr Siebeck, 1997), 179–205 at 200.

⁴⁴ Idem, “Sabbath and Festivals,” in *The Oxford Handbook of Jewish Daily Life*, ed. C. Hezser (Oxford: Oxford University Press, 2010), 566–586 at 568.

⁴⁵ Baumgarten, “Avoidance” (n. 38), 34–35.

ambiguous word *krt*, “to cut off,” is used for the expulsion of serious sinners. Two crucial cases are found in CD 20:25–26, where apostates will be cut off from the camps, and 1QS 2:11–18, where apostates will be cut off from all the “sons of light” (1QS 2:16). The latter case is part of a curse, during a ritual of blessings and curses:

May the anger of God and the wrath of his judgments burn upon him for everlasting destruction. May all the curses of this covenant cling to him. May God set him apart for evil, and may he be cut off from all the sons of light because of his backsliding from God through his idols and the stumbling-block of his iniquity. May he assign his lot amongst those who are cursed for ever. (1QS 2:15–17)

Third and fourth, Baumgarten briefly comments that expulsion from the community “was conceptually tantamount to death,” and that the “firm belief in ultimate divine judgment could well have led the Qumranites [...] to avoid as much as possible the taking of human life.”⁴⁶ He also refers to an intriguing but broken passage stating “and they vowed not to kill a man” (4Q275 2 4) in another text dealing with the yearly ritual. Those are Baumgarten’s suggestive arguments.

In this connection, it is probably telling that the end of the Damascus Document, fully preserved in 4Q266 11, contains a description of a similar yearly ritual, in which for those who are punished with permanent expulsion (for example someone who has illegitimate sexual intercourse with his wife), the term *mštlh*, “the one being sent away,” is used. This *hithpael* of *šlh* is not used elsewhere in Biblical or Qumranic Hebrew, and in the Mishnah it is only used for the scapegoat which is sent to Azazel. With respect to this ritual, it should be noted that the deliberate sinners are not merely sent away, but that this is preceded by a prayer which acknowledges that God has set boundaries, and that he sustains those who keep his holy laws, and curses those who transgress them (4Q266 11 12–14).

One may counter that those infractions that are punished with expulsion are not capital cases, and that we would not know how the camps of the Damascus Document or the settlements of the *Yahad*, would have dealt with such severe cases. The texts that we have are not explicit about this, but I would expect that they too would be expelled, rather than executed.

6. Conclusions

On the basis of what has been discussed, one can draw the following tentative conclusions.

(1) The texts do not seem to be directly concerned with the prohibition to kill as formulated in the Decalogue and hardly shed light on how this particular prohibition was interpreted.

⁴⁶ Ibid., 35.

(2) In general, narrative texts such as Enoch or Jubilees, have a negative view towards violence that results in death. On the other hand, Jubilees legitimizes the Shechem episode as well as Jacob's killing of Esau by seeing them as instruments that fulfil God's judgment. Perhaps we may read the Damascus Document's prohibition of killing gentiles for the sake of wealth in tandem with those two episodes.

(3) The halakic sections in Jubilees and especially the Temple Scroll are of interest since they give some insight in legal discussions about killing. For example, the interpretation of "in the field" as "in secret," and hence "intentional," is of importance.

(4) With regard to the death penalty, things are much more complex. One should clearly distinguish between the texts. It would seem that both Jubilees and the Temple Scroll are more stringent than the Hebrew Bible, by adding capital cases. However, I agree with Joseph Baumgarten, against Aharon Shemesh, that the Damascus Document seems to reflect an avoidance of the death penalty, at least in some cases. And then, the Rule of the Community only mentions expulsion and future judgment. How should we explain this? Is this because of different provenance, different genres or rhetorics, and settings of the circles behind the different texts? Regardless the answer, one cannot simply refer to *the* Dead Sea Scrolls or *the* Qumran position on the death penalty.

(5) Not only the Temple Scroll, but, if Lawrence Schiffman's interpretation is correct, also the Damascus Document, regards treason, as well as informing to gentiles on one's own people as a capital sin, worthy of death.

(6) Finally, future research or reflection should take up Baumgarten's two suggestions, namely that the death penalty has been replaced by expulsion, and that the belief in a final judgment may have prevented the effectuation of the death penalties in this life.